

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Regency
PL-II

31534

FILE: B-218776 **DATE:** June 24, 1985

MATTER OF: Putnam Mills Corporation

DIGEST:

Protest that awardee will not perform the amount of work in a labor surplus area required to qualify for an evaluation preference is a matter of responsibility that GAO will not consider except in limited circumstances not present here.

Putnam Mills Corporation protests the proposed award of a contract for 362,800 yards of sage green oxford cloth to Prestex, Inc., under invitation for bids (IFB) No. DLA100-85-B-0449, issued by the Defense Personnel Support Center, Philadelphia, Pennsylvania. This was a small business set-aside with a price differential for labor surplus area (LSA) concerns. We dismiss the protest.

Putnam essentially alleges that Prestex was ineligible for an LSA preference in determining the low bidder because Prestex will not perform the required amount of work in an LSA. Specifically, Putnam alleges, based on its own subcontractor quotes and cost estimates, that the total "finishing costs" that any bidder would incur in a non-LSA area exceed 50 percent of the total cost of the contract. The solicitation provided for a preference (a penalty was assessed against bidders proposing to perform the work in non-LSA areas) where more than 50 percent of the costs of the work will be performed in an LSA. If the 2.2 percent evaluation penalty were applied to Prestex's low bid of \$3.91 a yard, Putnam Mills argues, its bid of \$3.98 a yard would be lower.

Prestex's bid specifically states that more than 50 percent of the costs of the work will be performed in an LSA. The agency considers Prestex's bid to be acceptable.

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The question of whether Prestex will perform the required amount of work in an LSA relates to the contracting agency's affirmative determination of Prestex's responsibility. Orkand Corp. et al., B-209662.2, et al., Apr. 4, 1983, 83-1 CPD ¶ 349. This Office does not review protests against affirmative determinations of responsibility unless there is a showing of possible fraud or bad faith on the part of procuring officials or that the solicitation contains definitive responsibility criteria which the procuring agency failed to apply. Dragon Services, Inc., B-213041, Mar. 19, 1984, 84-1 CPD ¶ 322.

The protest is dismissed.



Seymour Efros
Associate General Counsel